



RICHARD P. MIDDLETON
Legal Department
(313) 235-3647

June 13, 2006

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48909-7721

Re: In the matter of the Commission's own motion, ordering THE DETROIT
EDISON COMPANY to show cause why its retail rates for the sale and
distribution of electric energy should not be decreased
MPSC Case No. U-14838 (paperless)

Dear Ms. Kunkle:

Attached for electronic filing is the Response of The Detroit Edison Company to the
Responsive Filings of Energy Michigan and ABATE in the above-referenced case. Also attached
is a Proof of Service.

Very truly yours,

**Richard P.
Middleton**

Digitally signed by Richard P. Middleton
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Richard P. Middleton

RPM/kbt
Attachments
cc: Service List

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Commission's own motion,)
ordering **THE DETROIT EDISON COMPANY**)
to show cause why its retail rates for the sale and) Case No. U-14838
distribution of electric energy should not be decreased.)
_____)

RESPONSE OF THE DETROIT EDISON COMPANY
TO THE RESPONSIVE FILINGS OF ENERGY MICHIGAN AND ABATE

Pursuant to R 460.17335 (Rule 335) of the Commission's Rules of Practice and Procedure ("Commission's Rules") The Detroit Edison Company ("Detroit Edison") files this response to the June 8, 2006 pleading filed by Energy Michigan, Inc ("Energy Michigan"), and the June 12, 2006 pleading filed by the Association of Businesses Advocating Tariff Equity ("ABATE"). In support of this response Detroit Edison states as follows:

1. On June 1, 2006 in compliance with the Commission's directive in the above captioned case Detroit Edison filed its Response and Application including testimony and exhibits that demonstrated that the Company anticipates that it will experience a revenue deficiency in 2007. Specifically, paragraph 7 of Detroit Edison's June 1, 2006 Response and Application states:

"Applicant's testimony and exhibits filed contemporaneously with this Response and Application evidence a need for additional annual revenue effective January 1, 2007, of \$45 million above the revenues generated under current rates, based upon a 2005 historical test year adjusted for known and measurable changes through 2007."

2. In light of the possibility that the Commission could determine that a revenue deficiency existed and authorize an increase in rates, and based on the Commission's pronouncement that "all traditional matters pertinent to rate case determinations, including the

appropriate level of the Company's authorized rate of return on common equity, will be reviewed in this proceeding..." (Order at p. 5), the Company also requested that the Commission authorize it to issue a new Notice of Hearing indicating that the review initially contemplated for this proceeding will include the possibility of a rate increase for customers.

3. On June 8, 2006 Energy Michigan filed a pleading purporting to be a "Reply to Detroit Edison (sic) Request for Approval of Amended Notice of Hearing". In its pleading Energy Michigan argues that the Commission has limited the scope of this proceeding to rate decreases and therefore Detroit Edison's request to re-notice the proceeding to include the possibility that rates could increase should be denied, or in the alternative the Commission should reconsider and grant Energy Michigan's prior request to allow consideration of the allocation of costs between generation and distribution functions.¹ Energy Michigan reaches these conclusions based on its alleged analysis of certain portions of the testimony and exhibits Detroit Edison filed in this case with the Commission on June 1, 2006.

Energy Michigan's "Reply" should be denied because it does not conform to the provisions of Rule 335, is inconsistent with the plain language contained in the two orders issued by the Commission, and improperly attempts to argue factual matters before the Commission prior to hearing and the creation of a record in this case.

4. Rule 335 requires that motions among other things must include a notice of hearing, and to the extent the motion is based on facts not in the record it must be supported by affidavits.² Energy Michigan's "Reply" does not meet the requirements of Rule 335 because it is devoid of citation to any Commission Rule or Michigan Court Rule that provides a legal basis

¹ See: Energy Michigan's Motion, pp. 5-6

² R. 460.17335 (2), (5)

to file a “Reply” to Detroit Edison’s June 1, 2006 Response and Application, and does not include a notice of hearing.

In addition, Energy Michigan’s “Reply” is essentially predicated on alleged factual arguments regarding certain portions of Detroit Edison’s pre-filed testimony and exhibits. Energy Michigan’s factual analysis and conclusions are not part of any record because the hearings in this matter have not yet taken place, nor have any of the intervening parties filed testimony or exhibits. Energy Michigan’s factual arguments are not in the record and therefore under Rule 335 must be denied because they are not supported by affidavit.

Further it is appropriate to deny Energy Michigan any of the relief it has requested in its “Reply”, because it is inappropriate to place in a pretrial pleading before the Commission factual argument prior to the creation of a record. While not rising to the level of an illegal ex parte communication with the Commission, Energy Michigan’s “Reply” is however an attempt to improperly influence the Commission’s consideration of factual matters pertinent to this proceeding outside of proper due process which requires that the Commission makes its findings on matters contained in the record. (MCL 24.285)

5. The Commission in its May 25, 2006 Order in this case denied Energy Michigan’s motion for declaratory ruling stating that “[a]t this time, the Commission’s intention is to exclude the method for performing cost of service studies from this case”.³ Further the Commission found that, “[d]enial of Energy Michigan’s motion for declaratory ruling should not be interpreted as prejudging the issue of how **any rate change should be allocated between classes**”.⁴ The Commission also reiterated the fact that in its March 23, 2006 Show Cause

³ May 25, 2006 MPSC Order in Case No. U-14838, p. 2

⁴ Id. (emphasis added)

Order, “All traditional matters pertinent to rate case determinations, including the appropriate level of the company’s authorized return on common equity, will be reviewed in this proceeding”⁵

Energy Michigan argues in its “Reply” that the Commission strictly limited the scope of this case to consider only rate decreases.⁶ This argument is contrary to the express language contained in the Commission’s orders in this case and should therefore be denied. Not only has the Commission stated that **all** traditional rate case matters will be considered in this case, the Commission further emphasized in its order denying Energy Michigan’s request for declaratory ruling that it has not prejudged how any rate change should be allocated between classes. All matters considered in a traditional rate case encompass the possibility of a rate increase as well as a rate decrease, as does the Commission’s reference to any rate change. Contrary to Energy Michigan’s arguments the Commission’s express language does not strictly limit this case to rate decreases, and further expressly includes consideration, in a properly developed record, of all parties positions on allocations of any rate change between customer classes.

6. In further response to Energy Michigan, Detroit Edison states that in response to the Show Cause Order, the Company reviewed its costs pursuant to the Commission’s direction. While Detroit Edison has experienced an increase in revenue from customers returning to bundled service⁷, over the level existing when current rates were established based on a 2002 test period with known and measurable changes to 2004, the filing made by the Company in this proceeding, focused on 2007, shows that its current rates are not excessive. Many of the cost

⁵ Id at 1.

⁶ See: Energy Michigan’s Motion, p. 4.

⁷ The electric rates established in Case No. U-13808 included the full (uncapped) revenue from residential customers.

items identified in Detroit Edison's Application have occurred since the test period used by the Commission to set rates in the Company's last rate case. In addition, projected electric sales are some 1300 GWh lower than the level inherent in Detroit Edison's last rate case. Therefore, Detroit Edison has determined the need for additional annual revenues effective January 1, 2007, in order to recover the significant increased costs associated with environmental compliance; increased costs associated with providing employee benefits; the costs associated with the maintenance and operation of the Company's electric distribution system and generation capability; the increased costs associated with the physical security of the Company's electric generating system; the costs associated with dramatically increasing customer uncollectible accounts; the costs associated with implementation of the Enterprise Business System (EBS) which will replace several aging computer systems; and to approve and recognize for ratemaking purposes certain regulatory assets and depreciation practices. While cost savings generated by Detroit Edison's Performance Excellence Process are expected to significantly reduce the revenue deficiency, it will not eliminate it given the magnitude of expenditures the Company faces in the next several years. In addition, Detroit Edison's Application requests a number of rate adjustments such as the Choice Tracker Mechanism, the Pension Equalization Mechanism, and the Other Post-Employment Benefits Equalization Mechanism which are designed to provide more timely and equitable rate design and collection or refund of costs from customers.

Consequently, the Company renews its request that the Commission authorize the amendment of the Notice of Hearing published in this case to indicate that the review initially contemplated for this proceeding will include the possibility of a rate increase for customers.

Edison respectfully submits that this issue is so fundamentally important to the procedural legality of this case that it must be decided by the Commission as soon as possible.

7. In response to ABATE's June 12, 2006 responsive pleading Detroit Edison incorporates its response herein to Energy Michigan and states that ABATE's characterizations of the Commission's March 23 and May 25, 2006 Orders in this proceeding are incorrect. As discussed above, the Commission's orders expressly encompassed the possibility of a rate increase as well as a rate decrease when it found that all matters traditionally considered in rate case as well as allocations of any rate change between customer classes are matters properly before the Commission in this case. Accordingly, Detroit Edison's request to re-notice this matter was appropriate and consistent with the law and the determinations the Commission has already made as to the scope of this proceeding.

WHEREFORE all of the reasons stated above the Commission should deny the relief sought by Energy Michigan and ABATE and grant Detroit Edison's request to re-notice this proceeding.

THE DETROIT EDISON COMPANY

Legal Department

**Richard P.
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Date: June 13, 2006

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion,)
ordering THE DETROIT EDISON COMPANY to)
show cause why its retail rates for the sale and) Case No. U-14838
distribution of electric energy should not be)
decreased.)
_____)

PROOF OF SERVICE

STATE OF MICHIGAN)
)ss
COUNTY OF WAYNE)

ESTELLA BRANSON, being duly sworn, deposes and says that on the 13th day of June, 2006, a copy of the Response of The Detroit Edison Company to the Responsive Filings of Energy Michigan and ABATE in the above-referenced case was served upon the parties on the attached service list via e-mail and U.S. Mail.

Estella R. Branson

ESTELLA BRANSON

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Subscribed and sworn to before me
on this 13th day of June, 2006.

Kimberly A. Krasnodemski

Notary Public

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SERVICE LIST
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May 24, 2006
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May 24, 2006
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